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**BERNARD J. CURRAN**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

PATRICK GALLAGHER,

Plaintiff,

V.

CITY AND COUNTY OF SAN FRANCISCO, BERNARD CURRAN, RODRIGO SANTOS, WILLIAM HUGHEN, KEVIN BIRMINGHAM, NATALIA KWAITKOWSKA; JOE DUFFY,

## Defendants.

Case No.: 23-cv-03579-SI (JCS)

**DEFENDANT BERNARD  
CURRAN'S ANSWER TO  
PLAINTIFF PATRICK  
GALLAGHER'S UNVERIFIED  
SECOND AMENDED  
COMPLAINT**

Defendant BERNARD CURRAN (“Defendant”) herein responds to the unverified Second Amended Complaint of Plaintiff PATRICK GALLAGHER (“Plaintiff”) as follows:

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**DEFENDANT'S ANSWERS TO PLAINTIFF'S INDIVIDUAL  
ALLEGATIONS**

**INTRODUCTION**

1. Defendant does not contest this allegation and has no knowledge of the validity of this allegation.

2. Defendant denies this allegation as a whole. Defendant further denies the specific allegations relating to pay-to-play fraud, targeting of individuals as part of said fraud, that Plaintiff was in compliance with City ordinances, and that frivolous code enforcement violations were used.

3. Defendant denies this allegation as a whole. Defendant further denies the specific allegations that he “specifically perpetrated a scheme against Plaintiff” or that he was arrested and charged for accepting gratuities as rewards for building permits issued to Plaintiff directly. As to the allegation of whether Plaintiff spoke to the FBI about any scheme, Defendant has no personal knowledge of such interactions.

4. Defendant denies this allegation as a whole. Defendant further denies having any personal knowledge of Plaintiff's participation in FBI investigations as alleged and whether any retaliation took place from City employees due to an alleged fraudulent scheme against Plaintiff to deprive him of the subject property.

5. Defendant denies this allegation as a whole and denies having any personal knowledge of the transactions described.

6. Defendant denies this allegation as a whole. Defendant further denies this allegation specifically as to the portion of the statement indicating the subject property has not sold due to City retaliation. Defendant has no personal knowledge of the subject property as being in escrow three times and denies as to the rest of the allegation.

7. Defendant denies this allegation as a whole.

8. Defendant denies this allegation as a whole to the extent it includes him as an agent of the City.

## PARTIES

1       9.    Defendant does not contest this allegation, but has no personal knowledge  
 2 on whether Plaintiff is or was a resident of the City and County of San Francisco or that  
 3 Plaintiff is a trustee for the Madison Trust FBO Patrick Gallagher. Based on information  
 4 and belief, Plaintiff now appears to presently reside in Arizona.

5       10.   Defendant denies this allegation as a whole to the extent it incorrectly  
 6 describes the process by which the City issues permits, performs enforcement and is set  
 7 up from an organizational structure. Defendant also denies the allegation to the extent it  
 8 improperly describes his role as an employee of the City. Defendant denies this allegation  
 9 because he does not have any personal knowledge of the City's interactions and/or  
 10 transactions with Plaintiff and can only attest to alleged actions against him only.

11       11.   Defendant denies this allegation as a whole to the extent it incorrectly  
 12 describes the process by which the City issues permits, performs enforcement and is set  
 13 up from an organizational structure. Defendant also denies the allegation to the extent it  
 14 improperly describes his role as an employee of the City.

15       12.   Defendant denies this allegation as a whole to the extent it incorrectly  
 16 describes the process by which the City issues permits, performs enforcement and is set  
 17 up from an organizational structure. Defendant also denies the allegation to the extent it  
 18 improperly describes RODRIGO SANTOS' ("Santos") role as an employee of the City.  
 19 Furthermore, Defendant has no personal knowledge of the individual's role in  
 20 transactions involving Plaintiff as described.

21       13.   Defendant denies this allegation as a whole to the extent it incorrectly  
 22 describes the process by which the City issues permits, performs enforcement and is set  
 23 up from an organizational structure. Defendant also denies the allegation to the extent it  
 24 improperly describes JOE DUFFY'S ("Duffy") role as an employee of the City.  
 25 Furthermore, Defendant has no personal knowledge of the individual's role in  
 26 transactions involving Plaintiff as described.

27       14.   Defendant denies this allegation as a whole to the extent it incorrectly  
 28 describes the process by which the City issues permits, performs enforcement and is set

1 up from an organizational structure. Defendant also denies the allegation to the extent it  
 2 improperly describes KEVIN BIRMINGHAM'S ("Birmingham") role as an employee of  
 3 the City. Furthermore, Defendant has no personal knowledge of the individual's role in  
 4 transactions involving Plaintiff as described.

5 15. Defendant denies this allegation as a whole to the extent it incorrectly  
 6 describes the process by which the City issues permits, performs enforcement and is set  
 7 up from an organizational structure. Defendant also denies the allegation to the extent it  
 8 improperly describes MAURICIO HERNANDEZ'S ("Hernandez") role as an employee  
 9 of the City. Furthermore, Defendant has no personal knowledge of the individual's role  
 10 in transactions involving Plaintiff as described.

11 16. Defendant denies this allegation as a whole to the extent it incorrectly  
 12 describes the process by which the City issues permits, performs enforcement and is set  
 13 up from an organizational structure. Defendant also denies the allegation to the extent it  
 14 improperly describes WILLIAM HUGHEN'S ("Hughen") role as an employee of the  
 15 City. Furthermore, Defendant has no personal knowledge of the individual's role in  
 16 transactions involving Plaintiff as described.

17 17. Defendant denies this allegation as a whole to the extent it incorrectly  
 18 describes the process by which the City issues permits, performs enforcement and is set  
 19 up from an organizational structure. Defendant also denies the allegation to the extent it  
 20 improperly describes NATALIA KWAITKOWSKA'S ("Kwaitkowska") role as an  
 21 employee of the City. Furthermore, Defendant has no personal knowledge of the  
 22 individual's role in transactions involving Plaintiff as described.

23 18. Defendant denies this allegation as a whole.

24 19. Defendant denies this allegation as a whole. Defendant was and is not an  
 25 agent, servant, representative, employee or employer of any of the listed defendants other  
 26 than the City.

27 20. Defendant admits all of the parties listed in this allegation are defendants to  
 28 this action. Defendant however denies any connection with any of the listed defendants

1 other than with the City as a former employee of the City.

2 **JURISDICTION AND VENUE**

3 21. Defendant denies this allegation as a whole as to whether the amount in  
 4 controversy is met and whether this federal court is the proper venue for this matter to be  
 5 tried. Defendant denies this allegation to the extent it implies that the work on the subject  
 6 property was to be performed by the County of San Francisco as alleged.

7 22. Defendant neither admits or denies this allegation other than to admit that  
 8 this matter is presently before the United States District Court for the Northern District of  
 9 California.

10 **SATISFACTION OF GOVERNMENT CLAIMS REQUIREMENTS**

11 23. Defendant denies this allegation as a whole.

12 24. Defendant denies this allegation as a whole as to whether Plaintiff's written  
 13 claims to the City and County of San Francisco presented valid claims that were  
 14 actionable and whether the written claims adhered to statutory requirements. Defendant  
 15 admits that the City issued a written rejection to Plaintiff's claims.

16 25. Defendant denies this allegation as a whole. To the extent Plaintiff's  
 17 complaint and subsequent amended complaints are untimely, Defendant asserts the  
 18 affirmative defense of Plaintiff's claims being barred by applicable statute of limitations.

19 **PUBLIC ENTITY LIABILITY**

20 26. Defendant denies this allegation.

21 **FACTUAL ALLEGATIONS**

22 27. Defendant has insufficient information to either deny or admit this allegation  
 23 and on that basis denies the allegation as a whole.

24 28. Defendant has insufficient information to either deny or admit this allegation  
 25 and on that basis denies the allegation as a whole. Furthermore, Defendant has no  
 26 personal knowledge of whether Plaintiff is a veteran of the construction industry as he  
 27 claims for the time specified or that the subject property that was bought was within the  
 28 scope of Plaintiff's business or that the subject property was placed in the specified trust.

1       29. Defendant has insufficient information to either deny or admit this allegation  
 2 and on that basis denies the allegation as a whole.

3       30. Defendant has insufficient information to either deny or admit this allegation  
 4 and on that basis denies the allegation as a whole. Furthermore, Defendant can only  
 5 respond to allegations directly alleged against him and not to the actions of others and on  
 6 that basis denies the allegation as a whole.

7       31. Defendant denies this allegation as a whole. Furthermore, in terms of  
 8 specifics, Defendant denies Plaintiff's characterization of the of the interaction between  
 9 the parties as alleged or any characterization that Defendant "insisted" on Plaintiff hiring  
 10 Santos or that Defendant issued Plaintiff a "mandate". Defendant further denies that  
 11 Plaintiff complied with any directions/instructions given by Defendant.

12       32. Defendant denies this allegation as a whole. Defendant has not knowledge  
 13 of the interactions and transactions between the parties as described and on that basis  
 14 denies the allegation.

15       33. Defendant denies this allegation as a whole. Furthermore, Defendant  
 16 specifically denies that Plaintiff was issued an "all-encompassing permit" to begin any  
 17 renovation process.

18       34. Defendant denies this allegation as a whole. Defendant denies that he issued  
 19 any certificate of completion on the month or year specified.

20       35. Defendant has insufficient information to either deny or admit this allegation  
 21 and on that basis denies the allegation as a whole.

22       36. Defendant denies this allegation as a whole. Furthermore, Defendant  
 23 specifically denies that there was any "illegal 'pay to play' scheme" he was involved in.

24       37. Defendant has insufficient information to either deny or admit this allegation  
 25 and on that basis denies the allegation as a whole. Furthermore, Defendant specifically  
 26 denies that he "perpetrated" any scheme against Plaintiff with any other parties.

27       38. Defendant has insufficient information to either deny or admit this allegation  
 28 and on that basis denies the allegation as a whole. Furthermore, Defendant specifically

1 denies that Duffy, Birmingham, Hernandez, Hughen and Kwaitkowska and/or Santos  
 2 were close associates. Defendant has no personal knowledge of what discussions Plaintiff  
 3 had with the FBI if any. Defendant does admit that he was an employee of the City at the  
 4 time he interacted with Plaintiff regarding the subject property and worked in his capacity  
 5 as a City employee.

6       39. Defendant has insufficient information to either deny or admit this allegation  
 7 and on that basis denies the allegation as a whole. Defendant specifically denies the  
 8 allegation that he signed off on any certificate of completion for the subject property on  
 9 behalf of the City. As to the rest of the allegation, Defendant lacks sufficient personal  
 10 knowledge of the allegation and denies it on that basis.

11      40. Defendant has insufficient information to either deny or admit this allegation  
 12 and on that basis denies the allegation as a whole. Furthermore, Defendant specifically  
 13 denies the allegation based on his lack of personal knowledge of the events described  
 14 involving an unspecified/unidentified City Planning Commissioner and events unrelated  
 15 to facts involving this lawsuit including the referenced settlement reached between  
 16 unrelated parties.

17      41. Defendant has insufficient information to either deny or admit this allegation  
 18 and on that basis denies the allegation as a whole. Furthermore, Defendant specifically  
 19 denies the last statement Plaintiff attributes to the identified City employees to the extent  
 20 Plaintiff seeks to implicate Defendant with that alleged statement. Defendant has no  
 21 personal knowledge of any of the actions or statements alleged in this allegation and on  
 22 that basis denies it as a whole.

23      42. Defendant has insufficient information to either deny or admit this allegation  
 24 and on that basis denies the allegation as a whole. Furthermore, Defendant denies this  
 25 allegation specifically as to himself to the extent Plaintiff seeks to attribute the alleged  
 26 “demands” to Defendant.

27      43. Defendant has insufficient information to either deny or admit this allegation  
 28 and on that basis denies the allegation as a whole. Defendant has no personal knowledge

1 of the incidents described in the allegation and therefore denies the allegation as a whole.

2 44. Defendant has insufficient information to either deny or admit this allegation  
3 and on that basis denies the allegation as a whole. Defendant has no personal knowledge  
4 of the incidents described in the allegation and therefore denies the allegation as a whole.

5 45. Defendant has insufficient information to either deny or admit this allegation  
6 and on that basis denies the allegation as a whole. Defendant has no personal knowledge  
7 of what “evidence” was presented during the referenced hearing or that the referenced  
8 hearing took place and on that basis denies the allegation as a whole. Defendant further  
9 denies that he issued any alleged certificate of completion or that Defendant asserted any  
10 demands on Plaintiff as alleged and on that basis denies the allegation as a whole.  
11 Defendant denies any knowledge of Plaintiff speaking to the FBI or of Plaintiff being  
12 retaliated against by the City as alleged.

13 46. Defendant denies this allegation as a whole especially any reference to the  
14 issuance of a “valid certificate of completion” to the extent Plaintiff seeks to imply the  
15 identified certificate was issued by Defendant. As to the rest of the allegation, Defendant  
16 lacks sufficient information to either admit or deny the allegation and as a results denies  
17 the allegation in its entirety.

18 47. Defendant has insufficient information to either deny or admit this allegation  
19 and on that basis denies the allegation as a whole. Defendant has no personal knowledge  
20 of the incidents described in the allegation and therefore denies the allegation as a whole.  
21 Defendant lacks sufficient knowledge to offer an opinion on whether Duffy’s role as a  
22 Deputy Director working for the City entails all of the duties attributed to him by Plaintiff  
23 and on that basis, denies the allegations in Plaintiff’s allegations contained in 47(a), 47(b),  
24 47(c), 47(d), 47(e), 47(f) and 47(g).

25 48. Defendant has insufficient information to either deny or admit this allegation  
26 and on that basis denies the allegation as a whole. Defendant has no personal knowledge  
27 of the incidents described in the allegation and therefore denies the allegation as a whole.  
28 Defendant denies the allegation specifically to the extent Plaintiff seeks to implicate him

1 on issuing “demands” on behalf of the City that were illegal or part of any fraudulent  
 2 scheme.

3       49. Defendant has insufficient information to either deny or admit this allegation  
 4 and on that basis denies the allegation as a whole. Defendant has no personal knowledge  
 5 of the incidents described in the allegation and therefore denies the allegation as a whole.

6       50. Defendant has insufficient information to either deny or admit this allegation  
 7 and on that basis denies the allegation as a whole. Defendant has no personal knowledge  
 8 of the incidents described in the allegation and therefore denies the allegation as a whole.

9       51. Defendant has insufficient information to either deny or admit this allegation  
 10 and on that basis denies the allegation as a whole. Defendant has no personal knowledge  
 11 of the incidents described in the allegation and therefore denies the allegation as a whole.  
 12 Defendant denies Plaintiff’s allegation specifically to the extent Plaintiff seeks to  
 13 implicate him on issuing “demands” on behalf of the City that were illegal or part of any  
 14 fraudulent scheme.

15       52. Defendant has insufficient information to either deny or admit this allegation  
 16 and on that basis denies the allegation as a whole. Defendant has no personal knowledge  
 17 of the incidents described in the allegation and therefore denies the allegation as a whole.  
 18 Defendant denies any allegations by Plaintiff that indicate Plaintiff received a certificate  
 19 of completion or that any action of Defendant resulted in Plaintiff suffering a loss on the  
 20 subject property.

21       53. Defendant has insufficient information to either deny or admit this allegation  
 22 and on that basis denies the allegation as a whole. Defendant has no personal knowledge  
 23 of the incidents described in the allegation and therefore denies the allegation as a whole.

24       54. Defendant has insufficient information to either deny or admit this allegation  
 25 and on that basis denies the allegation as a whole. Defendant has no personal knowledge  
 26 of the incidents described in the allegation and therefore denies the allegation as a whole.

27       55. Defendant has insufficient information to either deny or admit this allegation  
 28 and on that basis denies the allegation as a whole. Defendant has no personal knowledge

1 of the incidents described in the allegation and therefore denies the allegation as a whole.

2 56. Defendant has insufficient information to either deny or admit this allegation  
3 and on that basis denies the allegation as a whole. Defendant has no personal knowledge  
4 of the incidents described in the allegation and therefore denies the allegation as a whole.

5 57. Defendant denies this allegation as a whole to the extent Plaintiff attributes  
6 any of the damages he suffered to actions allegedly performed by Defendant within the  
7 past five years. Defendant denies that in his role as an employee of the City he  
8 intentionally or vindictively drew out Plaintiff's renovation process on the subject  
9 property during any interaction he had with Plaintiff involving the subject property.

10 58. Defendant denies this allegation as a whole to the extent Plaintiff attributes  
11 any of the damages he suffered to actions allegedly performed by Defendant on behalf of  
12 the City as an employee of the City.

13 **FIRST CAUSE OF ACTION**

14 **SLANDER OF TITLE**

15 59. Defendant denies this allegation as a whole including any and all paragraphs  
16 being incorporated by Plaintiff as part of this allegation. Defendant reasserts all  
17 applicable denials to this allegation as previously expressed from paragraphs 1-58.

18 60. Defendant has insufficient information to either deny or admit this allegation  
19 and on that basis denies the allegation as a whole. Defendant lacks personal knowledge  
20 of whether Plaintiff owns the subject property through his trust, the Madison Trust FBO  
21 Patrick Gallagher and therefore denies this allegation as a whole.

22 61. Defendant denies this allegation as a whole to the extent Plaintiff alleges  
23 Defendant disparaged the quality of the subject property through frivolous code  
24 enforcement liens or refusing to release notices of violation, issuing and refusing to  
25 release abatement orders, revoking permits or revoking certificates of completion.  
26 Defendant has insufficient information to either deny or admit this allegation as to the  
27 other Defendants and on that basis denies the allegation as a whole.

28 62. Defendant denies this allegation as a whole to the extent Plaintiff alleges

1 Defendant made disparaging statements to members of the public, including real agents  
 2 or brokers and prospective purchasers of the subject property. Defendant has insufficient  
 3 information to either deny or admit this allegation as to the actions of the other defendants  
 4 and on that basis denies the allegation as a whole.

5       63. Defendant denies the allegation as a whole to the extent Plaintiff alleges that  
 6 Defendant made disparaging statements that were without privilege or justification and  
 7 that the statements were false and done with the intention of suggesting that the subject  
 8 property was unfit to be sold. Defendant further denies the allegation to the extent it  
 9 implies that Defendant has waived any applicable privilege Defendant is entitled to claim  
 10 based on his actions as an employee of the City during Defendant's interactions with  
 11 Plaintiff relating to the subject property. Defendant has insufficient information to either  
 12 deny or admit this allegation as to the other defendants and on that basis denies the  
 13 allegation as a whole.

14       64. Defendants denies the allegation as a whole to the extent Plaintiff alleges  
 15 that Defendant knew any statements made to Plaintiff were false and/or that Defendant  
 16 acted with reckless disregard of the truth or falsity of any alleged statements made.  
 17 Defendant has insufficient information to either deny or admit this allegation as to the  
 18 other defendants and on that basis denies the allegation as a whole.

19       65. Defendant denies the allegation as a whole to the extent Plaintiff alleges  
 20 Defendant knew or should have recognized someone else might act or forebear action in  
 21 reliance on any statements Defendant made about the subject property. Defendant denies  
 22 the allegation on the basis that it fails to identify who Plaintiff is referring to as "someone"  
 23 that might have acted in reliance or forebear based on any non-specified statement  
 24 Defendant is alleged to have made about the subject property. Defendant has insufficient  
 25 information to either deny or admit this allegation as to the other defendants and on that  
 26 basis denies the allegation as a whole.

27       66. Defendant denies the allegation as a whole. Defendant did not make any  
 28 statements that disparaged the subject property or Plaintiff and on that basis denies the

1 allegation. Defendant has insufficient information to either deny or admit this allegation  
 2 as to the other defendants and on that basis denies the allegation as a whole.

3 67. Defendant denies the allegation as a whole. Defendant specifically denies  
 4 that any action or statement made by Defendant caused the subject property to be  
 5 unsaleable. Defendant has insufficient information to either deny or admit this allegation  
 6 as to other defendants and on that basis denies the allegation as a whole.

7 68. Defendant denies the allegation as a whole. Defendant specifically denies  
 8 any action or statement made by him regarding the subject property caused Plaintiff to  
 9 suffer any financial loss or damage claimed. Defendant has insufficient information to  
 10 either deny or admit this allegation as to the other defendants and on that basis denies the  
 11 allegation as a whole.

12 69. Defendant denies the allegation as a whole. Defendant denies that any action  
 13 or statement made by Defendant regarding the subject property caused Plaintiff to have  
 14 to retain counsel to clear title on the property. Defendant denies Plaintiff has a right to  
 15 recover any attorney's fees and costs in bringing the action as Plaintiff cites to no  
 16 contractual relationship with Defendant and also does not cite to any statutory authority  
 17 that permits Plaintiff to recover such damages. Defendant has insufficient information to  
 18 either deny or admit this allegation as to other defendants and on that basis denies the  
 19 allegation as a whole.

20 **THIRD CAUSE OF ACTION**

21 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC**  
 22 **RELATIONS**

23 79. Defendant denies this allegation as a whole including any and all paragraphs  
 24 being incorporated by Plaintiff as part of this allegation. Defendant reasserts all  
 25 applicable denials to this allegation as previously expressed from paragraphs 1-69.

26 80. Defendant has insufficient information to either deny or admit this allegation  
 27 and on that basis denies the allegation as a whole. Defendant does not have personal  
 28 knowledge of whether Plaintiff owned the subject property at all relevant times or if the

1 subject property is held in the Madison Trust FBO Patrick Gallagher and on that basis  
 2 denies this allegation. Defendant has insufficient information to either deny or admit this  
 3 allegation as to the other defendants and on that basis denies the allegation as a whole.

4       81. Defendant has insufficient information to either deny or admit this allegation  
 5 and on that basis denies the allegation as a whole. Defendant has no personal knowledge  
 6 of whether Plaintiff established economic or contractual relationships with various real  
 7 estate agents, brokers, purchasers or prospective purchasers relating to the subject  
 8 property or if any such relationships led to the sale of the subject property and on that  
 9 basis denies the allegation as a whole. Defendant has insufficient information to either  
 10 deny or admit this allegation as to the other defendants and on that basis denies the  
 11 allegation as a whole.

12       82. Defendant denies the allegation as a whole because Defendant has no  
 13 personal knowledge of any real estate agents, brokers, purchasers or prospective  
 14 purchasers Plaintiff may have had a relationship with for the purchase of the subject  
 15 property and therefore did not know of any such relationships as alleged. Defendant has  
 16 insufficient information to either deny or admit this allegation as to the other defendants  
 17 and on that basis denies the allegation as a whole.

18       83. Defendant has insufficient information to either deny or admit this allegation  
 19 and on that basis denies the allegation as a whole. Defendant denies that any action he  
 20 took in relation to the subject property was for the purpose of falsely signifying to  
 21 unknown real estate agents, brokers, purchasers or prospective purchasers that there were  
 22 issues with the subject property simply to avoid considering purchase of the subject  
 23 property. Furthermore, Defendant denies the allegation because he lacks personal  
 24 knowledge that the subject property went into escrow on multiple occasions as alleged.  
 25 Any action Defendant took in relation to the subject property was within the law and as  
 26 allowed by local ordinances for the City and County of San Francisco, with Defendant in  
 27 his capacity as a building inspector and employee for the City and County of San  
 28 Francisco. Defendant has insufficient information to either deny or admit this allegation

1 as to the other defendants and on that basis denies the allegation as a whole.

2 84. Defendant denies the allegation as a whole. Defendant has insufficient  
 3 information to either deny or admit this allegation as to the other defendants and on that  
 4 basis denies the allegation as a whole.

5 85. Defendant denies the allegation as a whole. Defendant has insufficient  
 6 information to either deny or admit this allegation as to the other defendants and on that  
 7 basis denies the allegation as a whole.

8 86. Defendant denies the allegation as a whole. Defendant denies that Plaintiff  
 9 suffered any damages as a result of any action Defendant took in relation to the subject  
 10 property in his role as an inspector/employee for the City and County of San Francisco.  
 11 Defendant further denies that he was the cause of any damages Plaintiff suffers Plaintiff  
 12 alleges he suffered in regards to the subject property. Defendant has insufficient  
 13 information to either deny or admit this allegation as to the other defendants and on that  
 14 basis denies the allegation as a whole.

15 87. Defendant denies the allegation as a whole. Defendant denies that Plaintiff  
 16 suffered any damages as a result of any action Defendant took in relation to the subject  
 17 property in his role as an inspector/employee for the City and County of San Francisco.  
 18 Defendant further denies that he was the cause of any damages Plaintiff alleges he  
 19 suffered in regards to the subject property. Defendant has insufficient information to  
 20 either deny or admit this allegation as to the other defendants and on that basis denies the  
 21 allegation as a whole.

22 88. Defendant denies the allegation as a whole. Defendant denies that Plaintiff  
 23 suffered any damages as a result of any action Defendant took in relation to the subject  
 24 property in his role as an inspector/employee for the City and County of San Francisco.  
 25 Defendant further denies that he was the cause or a substantial factor for any damages  
 26 Plaintiff alleges he suffered in regards to the subject property. Defendant has insufficient  
 27 information to either deny or admit this allegation as to the other defendants and on that  
 28 basis denies the allegation as a whole.

## **FOURTH CAUSE OF ACTION**

## **VIOLATION OF CIVIL RIGHTS, 42 U.S.C. § 1983**

89. Defendant denies this allegation as a whole including any and all paragraphs being incorporated by Plaintiff as part of this allegation. Defendant reasserts all applicable denials to this allegation as previously expressed from paragraphs 1-88.

90. Defendant has insufficient information to either deny or admit this allegation and on that basis denies the allegation as a whole since Plaintiff merely recites statutory language without asserting any facts. Defendant has insufficient information to either deny or admit this allegation as to the other defendants and on that basis denies the allegation as a whole.

91. Defendant has insufficient information to either deny or admit this allegation and on that basis denies the allegation as a whole. Defendant specifically denies having any personal knowledge of whether Plaintiff had discussions with the FBI and also specifically denies that he engaged in any unspecified corruptive practices. Defendant has insufficient information to either deny or admit this allegation as to the other defendants and on that basis denies the allegation as a whole.

92. Defendant has insufficient information to either deny or admit this allegation and on that basis denies the allegation as a whole. Defendant specifically denies the allegation that he had any personal knowledge or was involved in the firing of Santos as the structural engineer on his renovation project for the subject property. Defendant further denies that he participated in any ongoing scheme or perpetuated any ongoing scheme against Plaintiff with other parties as alleged and on that basis denies the allegation as a whole. Defendant has insufficient information to either deny or admit this allegation as to the other defendants and on that basis denies the allegation as a whole.

93. Defendant has insufficient information to either deny or admit this allegation and on that basis denies the allegation as a whole. Defendant specifically denies having any personal knowledge of whether Plaintiff had discussions with the FBI about any “ongoing scheme”. Defendant denies he participated in any ongoing scheme or

1 perpetuated any ongoing scheme against Plaintiff with other parties as alleged and on that  
 2 basis denies the allegation as a whole. Defendant has insufficient information to either  
 3 deny or admit this allegation as to the other defendants and on that basis denies the  
 4 allegation as a whole.

5       94. Defendant denies the allegation as a whole. Defendant specifically denies  
 6 acting under color of local ordinance or law to use his authority as a City inspector and  
 7 an employee of the City and County of San Francisco to retaliate against Plaintiff to  
 8 deprive him of his right to freedom of speech under the Fourteenth Amendment and  
 9 United States Constitution relating to the subject property. Defendant denies engaging in  
 10 any unlawful activities in regards to the subject property for the purpose of denying  
 11 Plaintiff his rights to freedom of speech under the Fourteenth Amendment and United  
 12 States Constitution in regards to the subject property and denies: issuing and refusing to  
 13 release frivolous code enforcement liens; denies issuing and refusing to release notices of  
 14 violation; denies issuing and refusing to release abatement orders; denies revoking  
 15 permits; denies revoking a certificate of completion; and denies making disparaging  
 16 statements relating to the subject property. Any action Defendant took in relation to the  
 17 subject property was within the law and as allowed by local ordinances for the City and  
 18 County of San Francisco, with Defendant working in his capacity as a building inspector  
 19 and employee for the City and County of San Francisco. Defendant denies issuing any  
 20 certificate of completion for the subject property. Defendant has insufficient information  
 21 to either deny or admit this allegation as to the other defendants and on that basis denies  
 22 the allegation as a whole.

23       95. Defendant denies the allegation as a whole. Defendant denies targeting  
 24 Plaintiff's property interests or rights specifically. Defendant has insufficient information  
 25 to either deny or admit this allegation as to the other defendants and on that basis denies  
 26 the allegation as a whole.

27       96. Defendant denies the allegation as a whole. Defendant denies that any action  
 28 he took in relation to the subject property was done in response to Plaintiff's statements

1 concerning the subject property and was meant to deprive Plaintiff's exercise of his right  
 2 of freedom of speech. Any action Defendant took in relation to the subject property was  
 3 within the law and as allowed by local ordinances for the City and County of San  
 4 Francisco, with Defendant working in his capacity as a building inspector and employee  
 5 for the City and County of San Francisco. Defendant has insufficient information to either  
 6 deny or admit this allegation as to the other defendants and on that basis denies the  
 7 allegation as a whole.

8 97. Defendant denies this allegation as a whole. Defendant has no personal  
 9 knowledge of any statements made by Plaintiff regarding the subject property that were  
 10 a matter of public concern and on that basis denies the allegation as a whole. Defendant  
 11 has insufficient information to either deny or admit this allegation as to the other  
 12 defendants and on that basis denies the allegation as a whole.

13 98. Defendant denies the allegation as a whole and denies that Plaintiff suffered  
 14 any harm as a result of any action Defendant took relating to the subject property.  
 15 Defendant has insufficient information to either deny or admit this allegation as to the  
 16 other defendants and on that basis denies the allegation as a whole.

17 99. Defendant denies the allegation as a whole. Defendant denies that Plaintiff  
 18 suffered any damages as a result of any action Defendant took in relation to the subject  
 19 property in his role as an inspector/employee for the City and County of San Francisco.  
 20 Defendant further denies that he was the cause of any damages Plaintiff alleges he  
 21 suffered in regards to the subject property. Defendant has insufficient information to  
 22 either deny or admit this allegation as to the other defendants and on that basis denies the  
 23 allegation as a whole.

24 100. Defendant denies the allegation as a whole. Defendant denies that Plaintiff  
 25 suffered any damages as a result of any action Defendant took in relation to the subject  
 26 property in his role as an inspector/employee for the City and County of San Francisco.  
 27 Defendant further denies that he was the cause of any damages Plaintiff alleges he  
 28 suffered in regards to the subject property. Defendant denies Plaintiff has a right to

1 recover any attorney's fees and costs in bringing the action as Plaintiff cites to no  
 2 contractual relationship with Defendant and also does not cite to any statutory authority  
 3 that permits Plaintiff to recover such damages. Defendant has insufficient information to  
 4 either deny or admit this allegation as to the other defendants and on that basis denies the  
 5 allegation as a whole.

6 **FIFTH CAUSE OF ACTION**

7 **INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**

8 101. Defendant denies this allegation as a whole including any and all paragraphs  
 9 being incorporated by Plaintiff as part of this allegation. Defendant reasserts all  
 10 applicable denials to this allegation as previously expressed from paragraphs 1-100.

11 102. Defendant denies this allegation as a whole. Defendant denies this allegation  
 12 as Plaintiff fails to provide any details regarding retaliatory or harassing acts that  
 13 Defendant is alleged to have committed and on that basis denies the allegation as a whole.  
 14 Defendant has insufficient information to either deny or admit this allegation as to the  
 15 other defendants and on that basis denies the allegation as a whole.

16 103. Defendant lacks sufficient information to either deny or admit this allegation  
 17 and on that basis denies this allegation as a whole with respect to whether Plaintiff has  
 18 suffered any severe emotional distress. Defendant denies he caused Plaintiff severe  
 19 emotional distress and denies he acted in reckless disregard. Defendant has insufficient  
 20 information to either deny or admit this allegation as to the other defendants and on that  
 21 basis denies the allegation as a whole.

22 104. Defendant lacks sufficient information to either deny or admit this allegation  
 23 and on that basis denies this allegation as a whole with respect to whether Plaintiff  
 24 suffered any severe emotional distress. Defendant denies he caused Plaintiff severe  
 25 emotional distress. Defendant has insufficient information to either deny or admit this  
 26 allegation as to the other defendants and on that basis denies the allegation as a whole.

27 105. Defendant lacks sufficient information to either deny or admit this allegation  
 28 and on that basis denies this allegation as a whole with respect to whether Plaintiff has

1 suffered any severe emotional distress. Defendant denies he caused Plaintiff severe  
 2 emotional distress and denies that Plaintiff has suffered any injuries or any damages as a  
 3 result of any action Defendant took in relation to the subject property. Defendant has  
 4 insufficient information to either deny or admit this allegation as to the other defendants  
 5 and on that basis denies the allegation as a whole.

6 106. Defendant denies this allegation as a whole with respect to whether Plaintiff  
 7 has suffered any severe emotional distress and whether Plaintiff's decision to hire legal  
 8 counsel were a result of any actions Defendant did in relation to the subject property.  
 9 Defendant denies he caused Plaintiff severe emotional distress. Defendant denies  
 10 Plaintiff has a right to recover any attorney's fees and costs in bringing the action as  
 11 Plaintiff cites to no contractual relationship with Defendant and also does not cite to any  
 12 statutory authority that permits Plaintiff to recover such damages. Defendant has  
 13 insufficient information to either deny or admit this allegation as to the other defendants  
 14 and on that basis denies the allegation as a whole.

15 107. Defendant denies this allegation as a whole with respect to whether Plaintiff  
 16 has suffered any severe emotional distress as a result of any action Defendant took in  
 17 relation to the subject property. Defendant denies he caused Plaintiff severe emotional  
 18 distress and denies he was a substantial factor in any emotional distress Plaintiff alleges  
 19 he suffered due to the subject property. Defendant has insufficient information to either  
 20 deny or admit this allegation as to the other defendants and on that basis denies the  
 21 allegation as a whole.

22 **SIXTH CAUSE OF ACTION**

23 **NEGLIGENCE**

24 108. Defendant denies this allegation as a whole including any and all paragraphs  
 25 being incorporated by Plaintiff as part of this allegation. Defendant reasserts all  
 26 applicable denials to this allegation as previously expressed from paragraphs 1-109.

27 109. Defendant denies this allegation as a whole. Defendant has insufficient  
 28 information to either deny or admit this allegation as to the other defendants and on that

1 basis denies the allegation as a whole.

2       110. Defendant denies this allegation as a whole. Defendant specifically denies  
 3 that he owed Plaintiff any duty of care and if any duty was owed, Defendant acted in a  
 4 reasonable manner as an inspector and employee of the City and County of San Francisco  
 5 should while performing an inspection at the subject property. Defendant has insufficient  
 6 information to either deny or admit this allegation as to the other defendants and on that  
 7 basis denies the allegation as a whole.

8       111. Defendant denies this allegation as a whole. Defendant has insufficient  
 9 information to either deny or admit this allegation as to the other defendants and on that  
 10 basis denies the allegation as a whole.

11       112. Defendant denies this allegation as a whole. Defendant denies he caused  
 12 Plaintiff to suffer any injuries as a result of any actions Defendant took relating to the  
 13 subject property. Defendant denies Plaintiff suffered any damages as a result of any  
 14 actions Defendant took in relation to the subject property. Defendant has insufficient  
 15 information to either deny or admit this allegation as to the other defendants and on that  
 16 basis denies the allegation as a whole.

17       113. Defendant denies this allegation as a whole. Defendant denies he caused  
 18 Plaintiff to suffer any injuries as a result of any actions Defendant took relating to the  
 19 subject property. Defendant denies Plaintiff suffered any damages as a result of any  
 20 actions Defendant took in relation to the subject property. Defendant denies Plaintiff has  
 21 a right to recover any attorney's fees and costs in bringing the action as Plaintiff cites to  
 22 no contractual relationship with Defendant and also does not cite to any statutory authority  
 23 that permits Plaintiff to recover such damages. Defendant has insufficient information to  
 24 either deny or admit this allegation as to the other defendants and on that basis denies the  
 25 allegation as a whole.

26       114. Defendant denies this allegation as a whole. Defendant denies he caused  
 27 Plaintiff to suffer any injuries as a result of any actions Defendant took relating to the  
 28 subject property. Defendant denies Plaintiff suffered any damages as a result of any

1 actions Defendant took in relation to the subject property. Defendant denies he was a  
 2 substantial factor for any damages Plaintiff alleges he suffered in relation to the subject  
 3 property. Defendant has insufficient information to either deny or admit this allegation  
 4 as to the other defendants and on that basis denies the allegation as a whole.

5

6 **SEVENTH CAUSE OF ACTION**

7 **DECLARATORY RELIEF**

8 115. Defendant denies this allegation as a whole including any and all paragraphs  
 9 being incorporated by Plaintiff as part of this allegation. Defendant reasserts all  
 10 applicable denials to this allegation as previously expressed from paragraphs 1-114.

11 116. Defendant has insufficient information to either deny or admit this allegation  
 12 and on that basis denies the allegation as a whole. Defendant lacks personal knowledge  
 13 of whether Plaintiff owns the subject property through his trust, the Madison Trust FBO  
 14 Patrick Gallagher and therefore denies this allegation as a whole.

15 117. Defendant denies this allegation as a whole. Defendant has insufficient  
 16 information to either deny or admit this allegation as to the other defendants and on that  
 17 basis denies the allegation as a whole.

18 118. Defendant denies this allegation as a whole. Defendant denies that any  
 19 actual controversy has arisen between him and Plaintiff and notes that the majority of  
 20 Plaintiff's allegations relate to actions allegedly done by other entities or individuals after  
 21 Defendant's purported involvement with the subject property. Defendant has insufficient  
 22 information to either deny or admit this allegation as to the other defendants and on that  
 23 basis denies the allegation as a whole.

24 119. Defendant denies this allegation as a whole to the extent it is unclear what  
 25 declaratory relief Plaintiff seeks under this cause of action. Defendant lacks sufficient  
 26 information to either deny or admit this allegation and on that basis denies the entire  
 27 allegation as a whole. Defendant has insufficient information to either deny or admit this  
 28 allegation as to the other defendants and on that basis denies the allegation as a whole.

## PRAYER

1. Defendant denies Plaintiff is entitled to general damages or any damages based on the allegations pled in the operative Complaint.

2. Defendant denies Plaintiff is entitled to special damages or any damages based on the allegations pled in the operative Complaint.

3. Defendant denies Plaintiff is entitled to compensatory damages or any damages based on the allegations pled in the operative Complaint.

4. Defendant denies Plaintiff is entitled to treble damages under Civil Code § 3345 or any damages based on the allegations pled in the operative Complaint.

5. Defendant denies Plaintiff is entitled to an order enjoining Defendants from violating Plaintiff's constitutional rights based on the allegations pled in the operative Complaint since it is unclear what constitutional rights if any were violated.

6. Defendant denies Plaintiff is entitled to injunctive relief based on the allegations pled in the operative Complaint since it is unclear what injunctive relief Plaintiff seeks if any.

7. Defendant denies Plaintiff is entitled to punitive damages or any damages based on the allegations pled in the operative Complaint.

8. Defendant denies Plaintiff is entitled to prejudgment interest and pretrial interest or any damages based on the allegations pled in the operative Complaint as Plaintiff cites to any statutory authority allowing collection of such interest.

9. Defendant denies Plaintiff is entitled to collect incurred attorney's fees and costs based on the allegations pled in the operative Complaint since Plaintiff fails to allege any contractual relationship with Defendant and fails to cite any statutory authority allowing recovery of such fees and costs.

10. Defendant denies Plaintiff is entitled any damages based on the allegations pled in the operative Complaint.

11. Defendant denies Plaintiff is entitled to any damages based on the allegations pled in the operative Complaint.

12. Defendant denies Plaintiff is entitled to claim relief from this Court based on the allegations pled in the operative Complaint.

## DEFENDANT'S AFFIRMATIVE DEFENSES

## **FIRST AFFIRMATIVE DEFENSE**

1. As a separate affirmative defense to the Second Amended Complaint and every cause of action alleged therein, Defendant alleges that the Second Amended Complaint, and each cause of action contained therein, fails to state facts sufficient to constitute a cause of action.

## SECOND AFFIRMATIVE DEFENSE

2. As a separate affirmative defense to the Second Amended Complaint and every cause of action alleged therein, Defendant alleges that the Second Amended Complaint, and each cause of action therein, is barred by the applicable statute of limitations. See Cal. Civ. Proc. Code § 335.1; *Jackson v. Barnes*, 749 F.3d 755, 761 (9th Cir.2014); *Jones v. Blanas*, 393 F.3d 918, 928 (9th Cir. 2004).

### **THIRD AFFIRMATIVE DEFENSE**

3. As a separate affirmative defense to the Second Amended Complaint and every cause of action alleged therein, Defendant alleges that other persons were negligent and/or committed intentional acts, and that this negligence or these intentional acts proximately contributed to the happening of the incidents referred to in the Second Amended Complaint.

## **FOURTH AFFIRMATIVE DEFENSE**

4. As a separate affirmative defense to the Second Amended Complaint and every cause of action alleged therein, Defendant alleges the Second Amended Complaint is barred by laches.

## **FIFTH AFFIRMATIVE DEFENSE**

5. As a separate affirmative defense to the Second Amended Complaint and every cause of action alleged therein, Defendant alleges that the Second Amended Complaint is barred by the equitable Doctrine of Unclean Hands.

**SIXTH AFFIRMATIVE DEFENSE**

6. As a separate affirmative defense to the Second Amended Complaint and every cause of action alleged therein, Defendant alleges that other people or entities' prior misconduct and/or intentional acts were superseding and/or intervening causes for Plaintiff's injuries and/or damages, if any there were, for which Defendants cannot be responsible.

**SEVENTH AFFIRMATIVE DEFENSE**

7. As a separate affirmative defense to the Second Amended Complaint and every cause of action alleged therein, Defendant alleges that Defendants' conduct was privileged pursuant to California Civil Code § 47, and as a result, the Second Amended Complaint is barred.

**EIGHTH AFFIRMATIVE DEFENSE**

8. As a separate affirmative defense to the Second Amended Complaint and every cause of action alleged therein, Defendant alleges that all its actions were taken in good faith and with a reasonable belief that such actions were lawful.

**NINTH AFFIRMATIVE DEFENSE**

9. As a separate affirmative defense to the Second Amended Complaint and every cause of action alleged therein, Defendant alleges that statutory and common law immunities apply to the acts and/or omissions complained of.

**TENTH AFFIRMATIVE DEFENSE**

10. As a separate affirmative defense to the Second Amended Complaint and every cause of action alleged therein, Defendant's actions were not a result of an intent to deprive Plaintiff of any inherent constitutional right Plaintiff has to the subject property under either the California Constitution or the United States Constitution.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. As a separate affirmative defense to the Second Amended Complaint and every cause of action alleged therein, Defendants alleges that none of his practices, particularly those pertinent to allegations in the Second Amended Complaint, are or were

1 unlawful in that Defendant complied with any and all applicable statutes, regulations,  
 2 municipal/local ordinances and common law requirements and was acting in his lawful  
 3 capacity as a building inspector and employee for the City and County of San Francisco.

4 **TWELFTH AFFIRMATIVE DEFENSE**

5 12. As a separate affirmative defense to the Second Amended Complaint and  
 6 every cause of action alleged therein, Defendant alleges there was implied consent to  
 7 attend events complained of and to inspect the subject property to determine Plaintiff was  
 8 in compliance with state laws and regulations and under applicable lawful local municipal  
 9 code and ordinances pursuant to the City and County of San Francisco.

10 **THIRTEENTH AFFIRMATIVE DEFENSE**

11 13. As a separate affirmative defense to the Second Amended Complaint and  
 12 every cause of action alleged therein, Defendant alleges that his conduct was necessary  
 13 to further a compelling or legitimate competing interest.

14 **FOURTEENTH AFFIRMATIVE DEFENSE**

15 14. As a separate affirmative defense to the Second Amended Complaint and  
 16 every cause of action alleged therein, Defendant alleges Plaintiff had no reasonable  
 17 expectation of privacy and had no reasonable right to have the subject property fail to  
 18 comply with building standards expected under applicable lawful local municipal code  
 19 and ordinances pursuant to the City and County of San Francisco.

20 **FIFTEENTH AFFIRMATIVE DEFENSE**

21 15. As a separate affirmative defense to the Second Amended Complaint and  
 22 every cause of action alleged therein, Defendant alleges that none of his conduct was  
 23 highly offensive.

24 **SIXTEENTH AFFIRMATIVE DEFENSE**

25 16. As a separate affirmative defense to the Second Amended Complaint and  
 26 every cause of action alleged therein, Defendant alleges that any actions or omissions he  
 27 is alleged to have committed or failed to commit was done in his capacity as a building  
 28 inspector and employee for the City and County of San Francisco.

Defendant presently has insufficient knowledge or information on which to form a belief as to whether Defendant may have additional, as yet unstated, defenses available. Defendant reserves herein the right to assert additional defenses in the event discovery indicates that they would be appropriate.

## **SEVENTHEENTH AFFIRMATIVE DEFENSE**

17. Defendant alleges that Plaintiff lacks standing for some or all of the claims and remedies asserted.

## **EIGHTEENTH AFFIRMATIVE DEFENSE**

18. Defendant alleges that the Second Amended Complaint and each and every cause of action therein is barred because Plaintiff failed to use reasonable diligence to mitigate his alleged damages, and said failure bars or reduces the recovery, in any, from Defendant.

## **NINETEENTH AFFIRMATIVE DEFENSE**

19. Defendants allege that the actions complained of are protected by the doctrine of qualified immunity as set forth in *Anderson v. Creighton*, 483 U.S. 635 (1984) and related cases, absolute immunity and/or the common law immunities protecting peace officers, prosecutors and/or public officials.

## **TWENTIETH AFFIRMATIVE DEFENSE**

20. Defendant states that any act or omission on the part of the answering Defendants, their agents or employees, was not the proximate cause of Plaintiff's injury.

## **TWENTY-FIRST AFFIRMATIVE DEFENSE**

21. By reason of Plaintiff's own acts and omissions, Plaintiff is barred by the equitable doctrines of estoppel, laches, unclean hands, and waiver from seeking any recovery or injunctive relief from Defendant by reason of the allegations set forth in Plaintiff's Second Amended Complaint.

## **TWENTY-SECOND AFFIRMATIVE DEFENSE**

22. At all times mentioned in Second Amended Complaint herein, Plaintiff acted in a careless, reckless, wanton, and negligent manner in and about the matters set forth in

1 the Second Amended Complaint; that such careless, reckless, wanton, and negligent  
 2 conduct proximately contributed to the injuries and damages, if any, sustained or claimed  
 3 by plaintiff; and that as a consequence, Plaintiff's claims are barred.

4 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

5 23. Defendant denies that Plaintiff has been damaged in any sum or sums, or  
 6 otherwise, or at all, by reason of any act or omission of any defendants.

7 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

8 24. As a separate and affirmative defense to the Second Amended Complaint  
 9 and to each and every allegation contained therein, Defendant alleges that his conduct at  
 10 all times material herein was privileged and/or justified under applicable Federal law.

11 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

12 25. To the extent Plaintiff's failure to file a claim or legal action regarding the  
 13 facts alleged in the Second Amended Complaint bars this action each cause of action  
 14 therein is barred by the doctrine of *res judicata* and collateral estoppel.

15 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

16 26. Defendant alleges that all activities taken regarding the allegations in the  
 17 Second Amended Complaint were undertaken for valid law enforcement and/or  
 18 prosecutorial initiatives.

19 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

20 27. Defendant at all times acted in good faith, reasonably, truthfully, and/or  
 21 without any intent to deprive Plaintiff of any rights under the federal or state constitutions,  
 22 federal or state statutes, thereby entitling him to immunity from suit.

23 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

24 28. Defendant did not act with malice or bad faith, in reckless disregard, or in an  
 25 oppressive or willful manner, nor did he intend to harm or deprive Plaintiff of any rights.

26 //

27 //

28 //

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

29. Defendant alleges that the Plaintiff failed to allege facts in the Second Amended Complaint sufficient to state a claim for relief under 42 U.S.C. 1983 against the City and County of San Francisco, their agents, employees or officers.

**THIRTIETH AFFIRMATIVE DEFENSE**

30. Defendant alleges that Plaintiff has failed to exhaust the administrative remedies that are a prerequisite to this lawsuit.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

31. Municipalities, like the City, are absolutely immune from punitive damages under 42 U.S.C. section 1983. *See, e.g., City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981). Similarly, the individual defendants acting in their official capacities are not liable for punitive damages under Section 1983, as they are not “persons” under Section 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989); *Mitchell v. Dupnik*, 75 F.3d 517, 527 (9th Cir. 1996). Defendant was working in his capacity as a building inspector and employee for the City and County of San Francisco during the events alleged in Plaintiff’s Second Amended Complaint.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

32. The Second Amended Complaint and each cause of action therein are barred because Plaintiff’s claims are not ripe for adjudication.

**DEFENDANT’S PRAYER FOR RELIEF**

WHEREFORE, Defendant prays as follows:

1. That Plaintiff takes nothing from Defendant by this Second Amended Complaint;

2. That the Second Amended Complaint be dismissed in its entirety and with prejudice;

3. That Defendant be awarded their reasonable attorney’s fees and costs of suit incurred pursuant to 28 U.S.C. § 1927;

4. For costs of suit incurred herein; and

5. For such other and further relief as the Court deems proper.

Dated: December 22, 2025

## MURPHY, PEARSON, BRADLEY & FEENEY

By /s/ Alston L. Lew  
Timothy J. Halloran  
Alston L. Lew  
Attorneys for Defendant  
BERNARD J. CURRAN

ALL.5233390.docx

**CERTIFICATE OF SERVICE**

I, Ron Myers, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 550 California Street, 14<sup>th</sup> Floor, San Francisco, California 94104.

On December 22, 2025, I served the following document(s) on the parties in the within action:

**DEFENDANT BERNARD CURRAN'S ANSWER TO PLAINTIFF PATRICK GALLAGHER'S  
UNVERIFIED SECOND AMENDED COMPLAINT**

**VIA MAIL:** I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as listed below.

**X** **VIA E-MAIL:** I attached the above-described document(s) to an e-mail message to the person(s) at the e-mail address(es) listed below. My email address is RMyers@mpbf.com.

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## In Pro Per

E-mail: bigblockpat@gmail.com  
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I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on December 22, 2025.

Ron Myers